CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 847

HENRY C. HILL, WARDEN UNITED STATES NORTHEASTERN PENITENTIARY

vs.

THE UNITED STATES, EX REL. THOMAS M. WAMPLER

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

FILED MARCH 19, 1936

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INDEX

	Original	Print
Certificate from U. S. C. C. A., Third Circuit	1	1
Statement of facts	1	1
Questions certified	4	3
Judges' signatures	5	3
Clerk's certificate [omitted in printing]	6	3

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1 In United States Circuit Court of Appeals for the Third Circuit

No. 5892, October Term, 1935

HENRY C. HILL, WARDEN UNITED STATES NORTHEASTERN PENITENTIARY, APPELLANT

v.

UNITED STATES EX REL. THOMAS M. WAMPLER, APPELLEE

On Appeal from the District Court of the United States for the Middle District of Pennsylvania

Before BUFFINGTON, DAVIS, and THOMPSON, Circuit Judges

Certificate to the Supreme Court

Filed March 16, 1936

Statement of facts

In order to be guided by a proper decision in this case, the Circuit Court of Appeals for the Third Circuit desires the instruction of the Supreme Court of the United States and therefore, under authority of Section 239 of the Judicial Code, certifies questions of law arising from the following facts:

Thomas M. Wampler was indicted in the District Court of the United States for the District of Maryland on January 12, 1933, for violation of the income tax laws (U. S. C. A., Title 26, Sec.
2 2146). The indictment contained two counts, each count charging that Wampler had attempted to evade and defeat the payment of income tax by means of filing false and fraudulent returns for the years 1930 and 1931.

After a long trial he was, on December 12, 1933, convicted by a jury upon both counts of the indictment. On December 28, 1933, the judgment of the Court was pronounced as follows: "Fine five thousand dollars and eighteen months in penitentiary on each count of the indictment, said terms of imprisonment to be computed as beginning this 28th day of December 1933; fines to be cumulative and terms of imprisonment to run concurrently and that traverser pay costs of proceedings."

On the same day the Clerk of the United States District for the District of Maryland issued and forwarded to the United States Northeastern Penitentiary at Lewisburg, Pennsylvania, the commitment in which the judgment of the court was set out as follows: "That the traverser pay a fine of Five Thousand Dollars and be imprisoned in the United States Northeastern Penitentiary at Lewisburg, Pennsylvania, for eighteen months on each count of the indictment; said term of imprisonment to be computed as beginning

this 28th day of December 1933; the fines to be cumulative and the terms of imprisonment to run concurrently; and that the traverser pay the costs of prosecution; and in default of payment of said fines and costs, he stand further committed until the payment of said fines and costs or until discharged by due process of law."

On April 21, 1935, Thomas M. Wampler filed in the United States District Court for the District of Maryland, in the matter of United States vs. T. Morris Wampler, No. 17112 Criminal, a petition
3 directed to the Judge of the said Court, in which petition he alleged that the Court did not adjudge or provide or order that he was to stand committed until said fine and costs be paid; that the Clerk of the Court, in preparing the commitment, provided that the consequence of the non-payment of fine and costs shall be commitment in default thereof; and further alleged that the provision for commitment in default of payment of fine and costs was no part of the sentence imposed upon him by the Court. He prayed that "the record and commitment herein may be corrected nunc pro tunc to conform to the sentence as pronounced by the Court and that an order amending the commitment herein nunc pro tunc by striking therefrom the following: 'to stand committed until said fine and costs are paid'; and that the petitioner may have such further relief to which he may be entitled."

The prayer of this petition was, on April 25, 1935, denied by the sentencing Court, at which time that Court filed an opinion, in which it pointed out that Maryland is a common-law state; that the practice in the State courts is not to include in the judgment of the Court the express direction that the defendant stand committed until the fines are paid; that it has always been the practice in the District Court for the District of Maryland to follow the procedure in the State Court, but that the Clerk of the Court has instructions from the Court to include in the commitment the express provision that the defendant stand committed until the fines are paid, unless otherwise directed by the Court. No appeal was noted by Thomas M. Wampler from the decision of the Court.

Under date of July 23, 1935, Thomas M. Wampler filed in
4 the United States District Court for the Middle District of Pennsylvania, at Scranton, Pennsylvania, a petition for writ of habeas corpus, alleging that his detention at that time, based upon the fact that his actual imprisonment had expired, was unlawful, illegal and not justified either by the judgment or by the law, and praying that the legality of the said imprisonment be inquired into and declared unlawful and that he be discharged. Under date of July 31, 1935, an order was made by the Judge of the District Court for the Middle District of Pennsylvania, ordering Thomas M. Wampler discharged from the custody of the Warden of the Northeastern Penitentiary.

From that order an appeal was taken by Henry C. Hill, Warden of the Northeastern Penitentiary, respondent in said habeas corpus

proceeding. Pending the appeal, the United States Circuit Court of Appeals for the Third Circuit, feeling that the questions raised were of importance to the administration of Federal criminal law, stated that they should be certified to the Supreme Court of the United States.

The questions of law, growing out of the foregoing facts upon which the United States Circuit Court of Appeals for the Third Circuit desires instruction by the Supreme Court of the United States, are these:

Questions

1. Was the provision in the commitment for imprisonment for nonpayment of fine and costs which was inserted by the Clerk but not included in the sentence orally pronounced by the judge, (a) void? or (b) merely irregular?

2. Was the determination of the District Court on the petition to correct the commitment, a final judgment conclusive on the issue as to the validity of such commitment until reversed by appropriate proceedings for review?

3. Will habeas corpus lie in one court to correct the commitment of another court which certainly, definitely, and specifically directs the imprisonment of relator for nonpayment of fine and costs on the ground that such provision was inserted by the Clerk, but was not the sentence orally pronounced by the Court?

JOSEPH BUFFINGTON,
J. WARREN DAVIS,
J. WHITAKER THOMPSON,
Judges of the United States Circuit Court of Appeals Sitting in said case.

[Clerk's certificate to foregoing certificate omitted in printing.]

(Endorsement on cover:) File No. 40401. U. S. Circuit Court of Appeals, Third Circuit. Term No. 847. Henry C. Hill, Warden United States Northeastern Penitentiary, vs. The United States, ex rel. Thomas M. Wampler. Certificate. Filed March 19, 1936. Term No. 847 O. T. 1935.

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